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Application No. 10/731,684
Amendment D

REMARKS

Responsive to the Office Action mailed December 8, 2005, Applicants provide the following. The claims have been amended without adding new matter. Claim 52 has been amended to correct a typographical error. Therefore, fourteen (14) claims remain pending in the application: Claims 13-25 and 52. Reconsideration of claims 13-25 and 52 in view of the amendments above and remarks below is respectfully requested.

By way of this amendment, Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Thomas F. Lebens at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

Common Ownership of Pending Application and

U.S. Patent No. 6,543,365 (Vasel et al.)

1. The pending Application (i.e., Application No. 10/731,684) and U.S. Patent No. 6,543,365 (Vasel et al.) were, at the time the invention of the pending Application was made, owned by or under an obligation of assignment at the time of invention to JACOR TACTICAL SYSTEMS, INC.

Claim Rejections - 35 U.S.C. §102

2. Claim 16 stands rejected under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 4,448,106 (Knapp). Applicants respectfully traverse this rejection. Claim 16 is not anticipated by the Knapp reference because the Knapp reference fails to describe at least each element of claim 16. Specifically, the Knapp reference fails to describe at least "an inhibiting substance" and also fails to describe at least "an inhibiting substance contained within the volume" as recited in claim 16. Knapp describes a "system for identifying a hard target from a distance" (Knapp, abstract), and continues to describe a number of identifying substances such as paint, dye, a light beacon, and a flare and/or smoke identifier. (See Knapp, col. 5, lines 29-67).

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Knapp fails to describe the use of an "inhibiting substance". M.P.E.P. section 2131 recites in part "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." The Knapp patent fails to teach every element of claim 16. Therefore, claim 16 is not anticipated by the Knapp patent.

Furthermore, Knapp fails to describe at least "additional stabilizers positioned on the exterior of the second part" as recited in claim 16. The Examiner relies upon reference numbers 92 and 92' of figure 16 in Knapp to demonstrate that Knapp discloses this limitation of claim 16. However, reference numbers 92 and 92' describe the fins which the examiner has already equated to the claimed "stabilizing fins". Therefore, the Knapp patent fails to describe every element of claim 16, and thus, claim 16 is not anticipated by the Knapp patent.

3. Claim 52 stands rejected under 35 U.S.C. § 102(b), as being anticipated by either U.S. Patent No. 4,448,106 (Riffet) or U.S. Patent No. 2,112,758 (Blacker). Applicants respectfully traverse these rejections because the Riffet and Blacker patents both fail to describe every element as recited in claim 52. For example, claim 52 recites in part, "a projectile comprising ... an inhibiting substance contained within the volume ... wherein the inhibiting substance is dispersed into a cloud upon impact of the projectile with a target." Neither the Riffet or Blacker patents describe at least a projectile with an inhibiting substance that is dispersed into a cloud upon impact with a target. Therefore, claim 52 is not anticipated by the Riffet and Blacker patents.

Claim Rejections - 35 U.S.C. §103

4. Claims 13-25 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over U.S. Patent No. 6,543,365 (Vasel et al.) in view of U.S. Patent No. 5,361,700 (Carbone).

Applicants have made a statement above indicating that the pending Application and the Vasel patent were, at the time the invention of the pending Application was made, owned

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by or under an obligation of assignment at the time invention to JACOR TACTICAL SYSTEMS, INC.

35 U.S.C. §103(c) recites:

subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Applicants submit that both the Vasel patent and the present application were assigned and/or under an obligation of assignment at the time of invention of the pending application to JACOR TACTICAL SYSTEMS, INC.

The pending application has a priority date of February 10, 2003 based on U.S. Provisional Application No. 60/446,657 that provides support for the claims of the pending application, and the Vasel patent issued on April 8, 2003. Therefore, under 35 U.S.C. §103(c) the Vasel patent cannot be applied against the present application, and thus, Applicants respectfully request the rejection of claims 13-25 over Vasel in view of Carbone be withdrawn.

Further with regard to at least independent claim 13, Applicants respectfully submit that the Carbone patent fails to describe at least "a propulsion block positioned proximate to the stabilizing fins that maintains substantially all of the propulsion force behind the propulsion block and to evenly distribute the propulsion force to the projectile" as recited in claim 13. The office action equates the "gas-sealing disc" (reference No. 9) in the Carbone patent to the claimed propulsion block. The gas-sealing disc of Carbone, however, at least cannot evenly distribute the propulsion force to the projectile. The gas-sealing disc 9 will rupture at a weakest point causing the high-pressure gases to unevenly rush out at the site of the rupture, and therefore, exert a greater force on the projectile at or near the site of initial rupture. Therefore, the gas-seal disc of Carbone cannot be equated to the recited propulsion block of claim 13, and thus, a *prima facie* case of obviousness has not been shown.

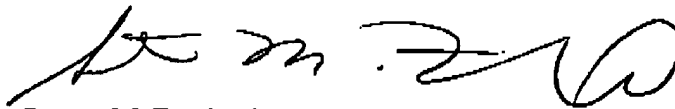
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CONCLUSION

Applicants submit that the above remarks place the pending claims in a condition for allowance. Therefore, a Notice of Allowance is respectfully requested.

Respectfully submitted,

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